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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,064	09/09/2003	Stefan Wayne Lauter	J763-001 US	5489

21706 7590 12/29/2006  
NOTARO AND MICHALOS  
100 DUTCH HILL ROAD  
SUITE 110  
ORANGEBURG, NY 10962-2100

EXAMINER
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MOSSER, ROBERT E

ART UNIT	PAPER NUMBER
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3714

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/29/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/658,064

Applicant(s)

LAUTER, STEFAN WAYNE

Examiner

Robert Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5-10-04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement submitted May 10<sup>th</sup>, 2004 has been considered. A copy of said information disclosure statement is attached hereto for the Applicant's records.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims **14-22** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The cited claims include features directed to a computer program in absence of any physical structure that would allow the described computer related method to be executed or enacted.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer

program's functionality to be realized, and is thus statutory. See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims **1-22** are rejected under 35 U.S.C. 102(b) as being anticipated by WH40K Campaign Game v1.1, evidenced by, WH40K Campaign Game Rules v1.5 and by 'Art of Warfare' campaign software changes.

Claims **1-3, 11-14, and 16:** WH40K Campaign Game Rules v1.1 herein after referred to as WH40K teaches a method and software program for managing the play of table top war game known as Warhammer 40,000, said managing including:

Registering the details of each player's forces and further registering the details of a campaign between said player forces (Page 2 of WH40K);

Communicating details regarding the opposing player's forces to each player ("email" of WH40K);

Updating the details of each of said player's forces and said details of a campaign responsive to player input ('The Game Sequence' page 4 of WH40K), in a manner such that each player's moves are exercised in a simultaneous manner (Page 2 of WH40K);

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Communicating said updated the details of each player's forces and said campaign to the players (page 2 of WH40K);

Advancing the campaign time in discrete steps or game turns (Pages 4-5 of WH40K);

Utilizing a communications network including a management computer in communication with a plurality of client computers/terminals wherein the use of a computer program and the transfer of email between the players and a Game Master are understood to inherently require the usage of computers and a communications network (Pages 2, and 4, of WH40K);

Claims **4-6** and **17-19**: WH40K describes the claimed area of influence/ Combat effectiveness of a unit as being calculated based on the size/strength of the unit ('Casualties' Page 27 WH40K Campaign Rules), the type/category of the unit ('Troop Range Modifiers' Page 25 WH40K Campaign Rules), and the formation/stance of the unit ('Order modifier' Page 24 WH40K Campaign Rules).

Claims **7** and **20**: WH40K describes allowing the player to enter a command for a unit to execute during the current turn ('Movement Order Phase' Page 17 WH40K Campaign Rules).

Claims **8** and **21**: WH40K describes accounting for a units strength and condition alternatively described as weariness, based on the type of movement ('Reserve

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*Movement*' Page 17 WH40K Campaign Rules), and the decision to rest in place of movement to recover lost strength and condition (*'Recover*' Page 17 WH40K Campaign Rules).

Claim 9 and 15: WH40K describes accounting for the outcome of a battle through the updating of the battle results through the entry of the detail of each player force remaining into the management computer (*'Battle Resolution Phase*' Page 5, WH40K & *'Fight battle as WH40K*' Page 17 WH40K);

Claims 10 and 22: WH40K describes the battle phase of the table top game as being resolved prior to the conclusion of a turn of the campaign game and hence a turn in the table top game has a fixed relationship to a turn of the campaign game (*'Turn sequence*' Pages 4-5 WH40K).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 18<sup>th</sup>, 2006

RM



MARK SAGER  
PRIMARY EXAMINER